

REMARKS

Claims 1-9 and 19-38 have been rejected based on a nonstatutory obviousness type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,690,966 in view of Hessel (4,878,725) or Baker (5,042,980). Both Hessel and Baker, however, address the use of light delivered in a radial direction for treatment, not for diagnosis. Typically, the intensity of light used for treatment is much higher and purposely alters the state of tissue and consequently alters the response of the tissue to light.

The present invention uses light for diagnostic purposes, which is of lower intensity so as not to alter the state of the tissue. The response of the tissue to this low intensity illumination (see claim 5, for example) is weaker and difficult to collect and detect. The systems of Hessel and Baker are designed to deliver light for treatment, not to collect this weak radially returning diagnostic light. Hessel and Baker do not disclose or suggest the use of a detector to detect light returning from the tissue.

One skilled in the art would not, based on the teachings of Baker and/or Hessel regarding radially directed treatment light, find it obvious to combine the claims of the '966 patent therewith to obtain the systems and methods of the present invention that collects radially returning light for detection and diagnosis.

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Claims 1-4 and 19-38 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kittrell in view of Muller alone or further in view of Hessel and Baker.

The independent claims have been amended to recite an infrared reflector, such as that described at page 21, line 27 of the application, for example. The cited references do not disclose or suggest the use of an infrared reflector.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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